

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING September 20, 2005

A public meeting of the State Personnel Board will be held on **Tuesday, September 20, 2005, at the Department of Corrections, Buena Vista Correctional Facility, 15125 Highway 24 & 285, P.O. Box 2017, Buena Vista, Colorado 81211.** The public meeting will commence at **9:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by September 14, 2005.

I. REQUESTS FOR RESIDENCY WAIVERS

- A. September 1, 2005 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

- A. Petition for Declaratory Order of Valerie Frens v. Colorado Department of Corrections and Robert Flores, State Personnel Board case number 2006D001.

On September 7, 2005, Valerie Frens filed a Petition for Declaratory Order, requesting that the Board issue a Declaratory Order concerning determinations made in her 2001 case, the Initial Decision of the Administrative Law Judge, Val Frens v. Colorado Department of Corrections, Canon Minimum Center, State Personnel Board case number 2001B092, the award of back pay and benefits, administrative leave, wage differential, interest, and attorney fees and costs.

- B. Elaine Lanphier v. Department of Public Health and Environment, Laboratory Radiation Services, State Personnel Board case number 2003B017.

Complainant, an administrative assistant, appealed her administrative termination by Respondent, alleging discrimination based on her disability and seeking reinstatement to a position outside the division or front pay and front benefits, prehearing and post-hearing interest on any award of back pay and benefits, and attorney fees and costs. Respondent requested affirmance of the appointing authority's action and attorney fees and costs. After hearing, the ALJ found that Complainant is a disabled person within the meaning of the ADA, Complainant was otherwise qualified for her position, and

Complainant was terminated from her position because of her disability. However, the ALJ found that Complainant did not request reasonable accommodation as she did provide meaningful information regarding her request and, therefore, did not engage in the interactive process; Respondent's action was not arbitrary, capricious, or contrary to rule or law; and attorney fees are not warranted.

On August 1, 2005, the Initial Decision of the Administrative Law Judge was issued and mailed to the parties (see Certificate of Service). On September 1, 2005, Complainant filed her Notice of Appeal. On September 2, 2005, Respondent filed its Motion to Dismiss and Complainant filed Complainant's Motion for One-Day Extension of Time to File Notice of Appeal. On September 8, 2005, Complainant filed a Response to the Motion to Dismiss and Respondent filed its Response to Complainant's Motion for One-Day Extension of Time to File Notice of Appeal.

** Respondent's Motion to Dismiss and Complainant's Motion for One-Day Extension of Time to File Notice of Appeal are before the Board for consideration this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

A. Freddie Montoya v. Colorado State University at Pueblo, State Personnel Board case number 2005B059.

Complainant, a custodian, appealed his administrative termination, seeking reinstatement, back pay and benefits, and attorney fees. After hearing, the ALJ found that Respondent did not discriminate against Complainant on the basis of disability and that its action was not arbitrary, capricious, or contrary to rule or law. The ALJ concluded Complainant does not have a disability under the Colorado Anti-Discrimination Act, since his limitations do not substantially limit a major life activity. The ALJ further concluded that Complainant is not a "qualified person" under the Act, because he could not perform the essential functions of his position with or without reasonable accommodation. The ALJ also determined that Respondent was diligent in its pursuit of complete information on Complainant's physical limitations, gave appropriate consideration to all information before it, acted reasonably in this situation, provided Complainant with unpaid leave in order to give him extra time to prepare for his return to work, and hired a temporary employee for two months to assist him in performing the essential functions of his position. Thus, Respondent's action was not arbitrary, capricious, or contrary to rule or law, and attorney fees are not warranted.

On April 8, 2005, the Initial Decision of the Administrative Law Judge was issued. Respondent appealed the Initial Decision of the Administrative Law Judge on April 28, 2005. On August 1, 2005, Complainant filed his Appeal Brief from the Initial Decision of the Administrative Law Judge. On August 15, 2005, Respondent filed its Appeal Brief and Motion to Strike. On August 22, 2005, Complainant filed Complainant's Response to Respondent's Motion to Strike and Complainant's Reply Brief.

** Complainant's Appeal of the Initial Decision of the Administrative Law Judge and Respondent's Motion to Strike are before the Board for consideration this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

A. Brenda Johnson v. Department of Human Services, State Personnel Board case number 2005G053.

Complainant, a certified employee employed by the Department of Human Services, filed a petition for hearing on November 30, 2004, arguing that she was denied relief in a Step II grievance decision and that the final grievance decision was arbitrary and capricious because of "the numerous inaccuracies and false statements throughout the Final Agency Decision document." Complainant also argues that the action taken was "possibly contrary to rule or law considering Department of Personnel Rules Handbook Chapter 3 Page 6 stating, 'Compensation practices shall provide for equitable and fair treatment of similarly situated employees,' and considering Chapter 9 Page 51, R-9-3 (now 9-3B) in reference to possible discrimination due to organizational membership (union) and other non-job related factor (sic) such as contact with the original person grieved prior to employment with CMHIP."

Respondent argues that Complainant failed to meet her burden of showing that valid issues exist that merit a full hearing and that the Board should deny and dismiss Complainant's petition for hearing.

On September 7, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be denied.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Foggia Fognani v. Department of Corrections, Trinidad Correctional Facility, State Personnel Board case number 2005B043 (September 8, 2005).

Complainant, a teacher, appealed his disciplinary termination, seeking rescission of the termination, reinstatement to a similar position in a different facility, back pay and benefits, and an award of attorney fees and costs. After hearing, the ALJ found that Complainant committed the acts upon which discipline was based, including failing to report an inmate's physical and sexual threats against Complainant; violating the contraband regulation by bringing baked goods in for the inmate; and engaging in sexual innuendo, but not sexual contact, with the inmate. Affirming Respondent's termination, the ALJ also concluded that Respondent's action was not arbitrary, capricious, or contrary to rule or law; Respondent did not retaliate against Complainant for exercising his rights under FMLA; and Complainant is not entitled to an award of attorney fees and costs.

[The deadline for appealing the Initial Decision of the Administrative Law Judge is October 11, 2005.]

VI. REVIEW OF THE MINUTES FROM THE AUGUST 16, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 16, 2005 PUBLIC MEETING:

- A. Benjamin Vialpando v. Department of Transportation, State Personnel Board case number 2005G002.

The Board reviewed and considered Complainant's Request for Oral Argument and voted to deny Complainant's Oral Argument. The Board voted to adopt the Preliminary Recommendation and deny the Petition for Hearing.

- B. Freddie Montoya v. Colorado State University at Pueblo, State Personnel Board case number 2005B059.

The Board reviewed and considered Complainant's Request for Oral Argument and voted to deny Complainant's request.

- C. Betty Pinkerton v. Department of Transportation, State Personnel Board case number 2003B115.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge. The Board voted to adopt the Initial Decision of the Administrative Law Judge and made the Initial Decision an Order of the Board. Respondent's Request that the Board Dismiss Complainant's appeal and Affirm the Initial Decision of the Administrative Law Judge is rendered moot by the adoption of the Initial Decision of the Administrative Law Judge.

- D. Randy Pfaff v. Department of Corrections, State Personnel Board case number 2004B112(C).

The Board voted to adopt the findings of fact and conclusion of law No. 1 ("The corrective action was not arbitrary, capricious or contrary to rule or law") in the Initial Decision of the Administrative Law Judge and to reverse conclusions of law Nos. 2 ("Complainant did not commit the acts upon which discipline was based"), 3 ("Respondent's demotion of Complainant was arbitrary and capricious and contrary to rule or law"), and 4 ("Complainant is entitled to an award of attorney fees and costs incurred in appealing the demotion").

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. PROPOSED LEGISLATION AND/OR RULEMAKING

A. Report of the State Auditor - Department of Personnel & Administration and the State Personnel Board Performance Audit dated June 2005 and Proposed Whistle Blower Legislation

B. Proposed Future Rulemaking

C. Approval of 2005 Board Rule Changes

XI. EXECUTIVE SESSION

A. Case Status Report

- B. Minutes of the August 16, 2005 Executive Session
- C. Other Business

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

October 18, 2005	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 15, 2005	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 20, 2005	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
January 17, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
February 21, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
March 21, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 18, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 16, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 20, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604